Hospital and Institutional Workers' Union, Local 250, SEIU, AFL-CIO *and* Affiliated Hospitals of San Francisco

Hotel and Restaurant Employees and Bartenders Union, Local 2, AFL-CIO *and* Affiliated Hospitals of San Francisco. Cases 20-CG-17 and 20-CG-18

April 1, 1981

DECISION AND ORDER

On October 30, 1980, Administrative Law Judge William H. Pannier III issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[1]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that Respondent Hotel and Restaurant Employees and Bartenders Union, Local 2, AFL-CIO, and Respondent Hospital and Institutional Workers' Union, Local 250, SEIU, AFL-CIO, their officers, agents, and representatives, shall take the action set forth in said recommended Order, as so modified:

1. In the recommended Order directed against Hospital and Institutional Workers' Union, Local 250, SEIU, AFL-CIO, substitute the following for paragraph 1:

"1. Cease and desist from honoring or engaging in any strike, picketing, or other concerted refusal to work at the premises of the above-named employer members of Affiliated Hospitals of San Francisco, or any other health care institution, until such time as timely notice is given, in writing, to such health care institutions and to the Federal Mediation and Conciliation Service, not less than 10 days prior to such action, setting forth the date and time of commencement of that action."

2. Substitute the attached "Appendix B" for that of the Administrative Law Judge.

[1] Inasmuch as Respondent Local 2 failed to give proper notice pursuant to Sec. 8(g) of the Act, and since Respondent Local 250 joined in the concerted activity initiated by Local 2, we find that under these circumstances it is unnecessary to pass upon whether Local 250 had an obligation under Sec. 8(g) to serve notice of its impending concerted activity. Accordingly, we affirm the Administrative Law Judge's conclusion that Local 250 violated Sec. 8(g) of the Act. In view of this, we have modified the recommended Order accordingly.

APPENDIX B

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT honor or engage in any strike, picketing, or other concerted refusal to work at the premises of Marshal Hale Memorial Hospital, Children's Hospital, Mount Zion Hospital and Medical Center, St. Luke's Hospital, St. Mary's Hospital and Medical Center, Presbyterian Hospital of Pacific Medical Center, and Saint Francis Memorial Hospital or any other health care institution, until such time as timely notice is given, in writing, to such health care institution and to the Federal Mediation and Conciliation Service, not less than 10 days prior to such action, setting forth the date and time of commencement of that action.

HOSPITAL AND INSTITUTIONAL WORKERS' UNION, LOCAL 250, SEIU, AFL-CIO

DECISION

STATEMENT OF THE CASE

WILLIAM J. PANNIER III, Administrative Law Judge: This matter was heard by me in San Francisco, California, on July 15, 1980.[1] On May 22, the Acting Regional Director for Region 20 of the National Labor Relations Board issued a complaint and notice of hearing in Case 20-CG-18, based on an unfair labor practice charge filed on May 16, alleging violations of Section 8(g) of the National Labor Relations Act, as amended, 29 U.S.C. § 151, *et seq.*, herein called the Act, by Hotel and Restaurant Employees and Bartenders Union, Local 2, AFL-CIO, herein called Respondent Local 2. On May 28, the Regional Director for Region 20 issued a complaint and notice of hearing in Case 20-CG-17, based on an unfair labor practice charge filed on May 16, alleging violations of Section 8(g) of the Act by Hospital and Institutional Workers' Union, Local 250, SEIU, AFL-CIO, herein called Respondent Local 250. On June 11, the said Regional Director issued an order consolidating cases and rescheduling hearings, consolidating Cases 20-CG-17 and 20-CG-18 for hearing and decision.

All parties have been afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, and to file briefs. Based on the entire record, on the briefs filed on behalf of the General Counsel, Affiliated Hospitals of San Francisco, and Respondent Local 2, and the oral argument on behalf of

[1] Unless otherwise stated, all dates occurred in 1980.

Respondent Local 250, and upon my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTION

At all times material, Affiliated Hospitals of San Francisco, herein called Affiliated, has been a nonprofit California corporation and a multiemployer bargaining association composed of employers located in San Francisco and Daly City, California—including Marshal Hale Memorial Hospital, Children's Hospital of San Francisco, Saint Francis Memorial Hospital, Mount Zion Hospital and Medical Center, St. Luke's Hospital, St. Mary's Hospital and Medical Center, and Presbyterian Hospital of Pacific Medical Center—engaged in the business of operating hospitals and providing in-patient and out-patient medical care services. Both Respondent Local 2 and Respondent Local 250, herein collectively called Respondents, have admitted that Affiliated and its employer-members are health care institutions within the meaning of Sections 2(14) and 8(g) of the Act. Moreover, they admitted that, during the 12-month period prior to issuance of the complaints, the employer-members of Affiliated, in the course and conduct of their business operations, collectively received gross revenues in excess of $250,000, and collectively purchased and received in California goods valued in excess of $50,000 which originated outside that State. Therefore, I find that at all times material Affiliated and its employer-members have been employers engaged in commerce or in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

It is undisputed that, at all times material, Respondents have each been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Issues*

In the final analysis, there are two issues in this case, each pertaining to a separate respondent, though linked by the common denominator of a strike called by Respondent Local 2 and arising from the notice requirement imposed by Section 8(g) of the Act.[2] On May 19, at 4 p.m. or shortly thereafter, Respondent Local 2 commenced a strike against Affiliated, picketing at all seven of the health care institutions named above. The issue with respect to Respondent Local 2's strike is whether the notice which it gave to Affiliated, and thereby to the seven health care institution employer-members,[3] satisfied the notice requirement imposed by Section 8(g) of the Act.

Respondent Local 250 represents, in essence, the housekeeping, dietary, and laundry employees employed by the seven employer-members of Affiliated and, in addition, the office and technical employees employed by Mount Zion Hospital and Medical Center. At all times material to this proceeding, Respondent Local 250 has been a party to collective-bargaining agreements covering these employees. Once Respondent Local 2's strike commenced, a number of employees represented by Respondent Local 50, totaling approximately 100 in number, refrained from reporting to work during various periods of time. There is no dispute that Respondent Local 250 failed to give sufficient notice, under Section 8(g) of the Act, to Affiliated and its employer-members of an intent to engage in a sympathy strike in support of Respondent Local 2's dispute. However, Respondent Local 250 argues that it has not engaged in any concerted activity in support of that dispute and that, instead, those of its members who had refrained from reporting for work had done so on the basis of individual decisions to support the strike of Respondent Local 2. Thus, the issue regarding Respondent Local 250 is whether the actions of its members, in the circumstances detailed in section III, C, *infra*, can be attributed to Respondent Local 250.

B. *The Notice Given by Respondent Local 2*

Respondent Local 2, as the representative of a unit of cooks employed at the above-named seven health care institutions, and Affiliated, acting as the representative of those institutions, had been parties to a collective-bargaining agreement, effective from December 1, 1977, until December 1, 1979. On May 7, no agreement having been reached, the San Francisco Labor Council granted Respondent Local 2's request for strike sanction. This meeting was attended by Affiliated's counsel. During the course of that evening, Vincent J. Sirabella, administrative assistant to the general president of Respondent Local 2's International and one of Respondent Local 2's negotiators during the bargaining with Affiliated, advised Affiliated's counsel that Respondent Local 2 would be submitting a 10-day notice of intention to strike. However, Sirabella did not state the date on which the strike would commence. Instead when counsel voiced concern that the strike might occur during the week of May 19, Sirabella replied that he could not tell when it might take place.

On May 9, Sirabella prepared a letter which stated: "Please be advised that this letter represents a ten day strike notice in connection with our present dispute with your clients, the Affiliated Hospitals of San Francisco." At some point between 3:30 and 5 p.m. that same day, Business Representative Daniel Valdez hand-delivered copies of this letter to Affiliated's counsel and to the Federal Mediation and Conciliation Service, herein

[2] To the extent pertinent here, Sec. 8(g) of the Act provides that:

> A labor organization before engaging in any strike, picketing, or other concerted refusal to work at any health care institution shall, not less than ten days prior to such action, notify the institution in writing and the Federal Mediation and Conciliation Service of that intention . . . . The notice shall state the date and time that such action will commence.

[3] There is no contention that notice to Affiliated and its counsel did not suffice to constitute notice to the seven employer-members represented by Affiliated in its negotiations with Respondent Local 2.

called FMCS. On May 13, a second letter from Sirabella was hand-delivered to Affiliated's counsel by Valdez. This letter, dated May 12, stated:

> This is to further clarify my letter to you of May 9, 1980 relative to our ten day strike notice covering the Affiliated Hospitals of San Francisco. The ten day notice refers to ten days following your receipt of our notification, which was at 4:00 p.m., May 9, 1980, which would project the strike date as May 19, 1980 at 4:00 p.m.

Sirabella explained, when testifying, that he had sent this letter because someone in his office had pointed out that the May 9 letter "had not complied with the strict technicality of the law with respect to notification . . . . [and] . . . . that the regulations required more than that, that is, pinpointing exact time and date . . . ." However, Valdez testified that he had not delivered a copy of the letter dated May 12 to FMCS and, so far as the record discloses, none was ever delivered to it.

As set forth in footnote 2, *supra*, Section 8(g) of the Act requires that a notice stating the date and time of any strike, picketing, or other concerted refusal to work at any health care institution shall be given both to the health care institution and to FMCS "not less than ten days prior to such action." Those parties who have addressed the issue of the adequacy of Respondent Local 2's notice each make arguments that have the effect of either subtracting from or adding to these stated requirements of Section 8(g) of the Act. Thus, while conceding that its May 9 notice had been deficient, Respondent Local 2 argues that in the circumstances presented here it should be found to have taken "reasonable steps" to satisfy its statutory obligation. Both the General Counsel and Affiliated argue, in opposition, that Section 8(g) is a nondiscretionary provision which must be applied literally. However, they then change partners with Respondent Local 2 by advancing the argument that labor organizations should be obliged to recite the location(s) where their activity will be taking place in situations where, as here, multiemployer groups of health care institutions are involved. In addition, Affiliated, though not the General Counsel, argues that the 10-day notice should also state the nature of the activity, i.e., withholding of labor only or picketing as well, in which labor organizations intend to engage.

"It is axiomatic, of course, that statutory construction must begin with the language of the statute itself." *Dawson Chemical Company, et al.* v. *Rohm and Haas Company*, 448 U.S. 176, 187 (1980). As a general rule of statutory construction, "the language of a statute controls when sufficiently clear in its context . . . .") *Ernst & Ernst* v. *Hochfelder, et al.*, 425 U.S. 185, 201 (1976). Neither courts nor the Board are "free to disregard [congressionally imposed] requirements simply because [they] consider them redundant or unsuited to achieving the general purpose in a particular case." *Commissioner of Internal Revenue* v. *Gordon et al.*, 391 U.S. 83, 93 (1968).

More specifically, Section 8(g) of the Act "should properly be interpreted according to its clear language." *Walker Methodist Residence and Health Care Center*, 227 NLRB 1630, 1631 (1977); accord: *Kapiolani Hospital* v. *N.L.R.B.*, 581 F.2d 230, 234 (9th Cir. 1978). The letter of May 9 omitted the date and time of commencement of Respondent Local 2's strike against Affiliated's employer-members. While these matters were included in the letter of May 12, the strike commenced less than 10 days after receipt of that letter and, in addition, there is no evidence that a copy of that letter had been furnished to FMCS, as required by Section 8(g) of the Act. Consequently, Respondent Local 2 failed to comply with the stated requirements of Section 8(g) of the Act before commencing its strike. However, it argues that the circumstances of this case—particularly certain comments made during negotiations by Sirabella to Respondent's counsel, the fact that the May 9 letter stated explicitly that it "represent[ed] a ten day strike notice," and the added fact that the May 12 letter, delivered "early in the ten day period," did provide a date and time of commencement—warrant the conclusion that Affiliated should have been aware that the strike would commence on May 19. Yet, this argument is fraught with several inherent deficiencies.

First, its acceptance would oblige the Board to delete the express commands of the second sentence of Section 8(g) of the Act by, in effect, subtracting from it the requirement that the date and time of commencement be recited in the notice. This it cannot do. Congress has provided that the notice "shall" contain the date and time of commencement. The use of "shall" means that inclusion of the commencement date and time "is mandatory rather than discretionary." *District 1199, National Union of Hospital & Healthcare Employees, RWDSU, AFL–CIO (First Healthcare Corporation, d/b/a Parkway Pavilion Healthcare)*, 222 NLRB 212 (1976). The Board does "not sit as a committee of review, nor [is it] vested with the power of veto." *Tennessee Valley Authority* v. *Hill*, 437 U.S. 153, 194–195 (1978). Accordingly, the Board is not free to rewrite the second sentence of Section 8(g) of the Act to make its requirements discretionary, rather than mandatory.

Second, acceptance of Respondent Local 2's argument would generate needless uncertainty, and concomitant litigation, by, in effect, inviting substitution of inherently imprecise and ambiguous oral statements for the more precise and unambiguous written statement of date and time of commencement required by Section 8(g) of the Act. No policy basis nor compelling need for such a substitution has been advanced by Respondent Local 2. Certainly, the statutory provision imposes no hardship on labor organizations, for "a ten-day notice requirement is not an oppressive burden to place on a union." *N.L.R.B.* v. *International Brotherhood of Electrical Workers Local Union No. 388 [Hoffman Company, Inc.]*, 548 F.2d 704, 712 (7th Cir. 1977).

Third, Respondent Local 2 has advanced no extenuating circumstances, beyond its control, for its failure to provide the statutorily required 10-day notice of date and time of commencement of its strike against Affiliated and its employer-members. Cf. *Bio-Medical Applications of New Orleans, Inc., d/b/a Greater New Orleans Artificial Kidney Center*, 240 NLRB 432 (1979). That is, there is no

evidence that its failure to comply with Section 8(g) of the Act had been caused by any third party nor by any cause over which it had no control. Moreover, it has advanced no valid excuse for its failure to include the commencement date and time in its May 9 letter. Further, it has provided no explanation for why, once it admittedly recognized that it had failed to comply with the statutory requirements in its May 9 letter, it could not have delayed commencement of the strike until 10 days had elapsed from delivery of the May 12 letter. After all, negotiations had been in progress since 1979 and the possibility of a strike had been contemplated throughout 1980. In these circumstances, there is no basis for concluding that Respondent Local 2 would have been prejudiced, in any degree, by delay for a few days in commencement of its strike. Consequently, it cannot be found that Respondent Local 2 had made a reasonable effort to comply with the requirements of Section 8(g) of the Act. Instead, it treated them, in effect, as no more than a hindering formality to commencement of its strike against Affiliated.

Finally, Section 8(g) of the Act requires that the 10-day notice, specifying date and time of commencement, be given to FMCS, as well as to the health care institution(s) involved in the dispute. Here, although a copy of the May 9 letter had been furnished to FMCS, there is no evidence that Respondent Local 2 had supplied it with a copy of the May 12 letter. Accordingly, so far as the record discloses, at no point had FMCS been advised of specifically when the strike against Affiliated's employer-members would be commencing, as required by Section 8(g) of the Act. Such notice is more than a mere formality. Notice to FMCS under Section 8(d) of the Act is intended as a vehicle for affording it "sufficient time to intervene in an effective manner in advance of a stoppage of work, rather than after it has occurred . . . ." *Local Union 219, Retail Clerks International Association, AFL-CIO* [*Carroll House of Belleville*] v. *N.L.R.B.*, 265 F.2d 814, 818 (D.C. Cir. 1959). In the area of health care institutions, this policy is of greater force in light of Congress' concern "that sudden, massive strikes could endanger the lives and health of patients in health care institutions." *Walker Methodist Center, supra*, 227 NLRB at 1631. Therefore, Respondent Local 2 violated the Act by failing to provide the 10-day notice, specifying date and time of commencement, to FMCS so that the latter could make the decision as to whether intervention prior to commencement of the strike might effectively resolve the dispute without a strike, thereby possibly avoiding industrial strike incident to a strike and, concomitantly, avoiding disruption of "the full flow of commerce" within the meaning of Section 1(b) of the Act. See, e.g., *Retail Clerks Union Local 727, chartered by and affiliated with United Food and Commercial Workers International Union, AFL-CIO, CLC (Devon Gables Health Care Center, Inc.)*, 244 NLRB 586 (1979).

Like Respondent Local 2, the General Counsel and Affiliated seek changes in the plain language of Section 8(g) of the Act, except in their arguments, they seek to add to it by arguing that the term "location(s)" should be read into its second sentence where, as here, multiemployer groups of health care institutions are involved in negotiations. Moreover, Affiliated argues that the nature of the action contemplated should also be required in 10-day notices. Yet, "the words of the [second sentence of Sec. 8(g) of the Act] are not ambiguous." *Mohasco Corporation* v. *Silver*, 447 U.S. 807, 818 (1980). They do not enumerate location(s) as an item that "shall" be included in 10-day notices. Indeed, that section draws no distinction between the types of notices required in single-employer and multiemployer situations. Furthermore, while the second sentence does contain the phrase "that such action," its command as to what must be included in 10-day notices does not encompass any more than date and time of commencement. It does not state that labor organizations must specify the precise type of protected activity in which they intend to engage.

Obviously, a conceptual difference can be drawn among the terms "strike, picketing [and] other concerted refusal to work." That is, labor can be withheld without accompaniment of picketing activity. Similarly, picketing can be conducted without employees withholding their services. Yet, these terms are used in the first sentence of Section 8(g), where Congress describes the scope of the activities which must be preceded by a 10-day notice, and not in the second sentence, where Congress specifies what must be included in 10-day notices. Indeed, the use of all three terms in the first sentence appears to have been intended to ensure that nomenclature would not become a vehicle for precluding application of Section 8(g) to labor disputes, however characterized, that "could endanger the lives and health of patients in health care institutions." *Walker Methodist Center, supra*. In other words, all three terms were used to avoid enmeshing the application of Section 8(g) of the Act in artificial distinctions, of the type that Affiliated now appears to be seeking to draw, by ensuring that its coverage would be as broad and all inclusive as possible.

Neither the General Counsel nor Affiliated has cited any legislative history that would warrant making the additions that they seek to have read into the second sentence of Section 8(g) of the Act. During the Senate debates, Senator Williams specifically cautioned "that this committee understood the issues confronting it, and went as far as it decided to go and no further and the Labor Board should use extreme caution not to read into this act by implication—or general logical reasoning—something that is not contained in the bill, its report and the explanation thereof." 120 Cong. Rec. S12104 (daily ed., July 10, 1974). Moreover, "any regulation imposed on a union's ability to strike or picket deprives workers of important rights." *IBEW, Local Union No. 388, supra*, 548 F.2d at 712. "The amendments should therefore not be read to reduce the preexisting rights of health care employees unless explicit language mandates that result." *Walker Methodist Center, supra*, 227 NLRB at 1632. Consequently, to include the additional requirements sought by the General Counsel and Affiliated would have the effect of reducing the ability of labor organizations to strike or picket, by imposing additional conditions precedent to their ability to exercise that right, and would be contrary to the legislative admonition against doing so.

But, argue the General Counsel and Affiliated, the additions which they seek would have the effect of making the notice required by Section 8(g) of the Act more precise and, consequently, would promote the legislative objective of minimizing the potential of the activity covered for endangering the lives and health of patients. Yet, the difficulty with this argument, which is essentially an appeal to rewrite the section based on policy grounds, is that it asks the Board to sit as a committee of review on the legislation written by Congress. As noted above, this the Board is not empowered to do. "It is not for us to speculate, much less act, on whether Congress would have altered its stance had the specific events of this case been anticipated." *TVA* v. *Hill, supra*, 437 U.S. at 185. "If corrective action is needed, it is the Congress that must provide it." *Busic* v. *United States*, 446 U.S. 398, 405 (1980).

Therefore, I find that Respondent Local 2 violated the Act only by failing to provide to Affiliated and to FMCS a 10-day notice specifying date and time of commencement of its strike.

C. *The Conduct of Respondent Local 250*

The General Counsel and Affiliated argue that Respondent Local 250 did engage in a strike and picketing in support of Respondent Local 2's dispute with Affiliated and that it did do so without having given the notice required by Section 8(g) of the Act. As set forth in section III, A, *supra*, it is undisputed that employees represented by Respondent Local 250 refrained, at various times, from crossing the picket lines of Respondent Local 2. It is also undisputed that Respondent Local 250 failed to give proper timely notice, under Section 8(g) of the Act, prior to this conduct by those employees. However, Respondent Local 250 argues that it never engaged in a strike and picketing in connection with Respondent Local 2's dispute with Affiliated. Rather, argues Respondent Local 250, it did no more than advise employees which it represented of their rights to honor picket lines erected by Respondent Local 2, leaving to those employees the decision as to whether or not to do so.

If Respondent Local 250 had done no more than present to employees that it represented a neutral statement of their right to refrain from crossing the picket lines of Respondent Local 2, this would be a different situation from the one, in fact, presented here. "The law does not require that a union refrain from making the law known to its members." *Building and Construction Trades Council of Tampa and Vicinity, AFL-CIO, et al. (Tampa Sand and Material Co.)*, 132 NLRB 1564, 1566 (1961). Indeed, even the fact that its stewards may have honored those picket lines would not mandate a conclusion that Respondent Local 250 had been responsible for their actions. For, such a result would "foreclose the steward, simply by reason of his office, from all individual freedom of action." *Id.* at 1569.

However, the evidence in this matter shows that Respondent Local 250 did more than simply make the law known to employees that it represented. To the contrary, the record discloses that it actively encouraged and persuaded them to honor the picket lines of Respondent Local 2 and that it intended to have them honor those picket lines. Thus, in a telegram, dated May 13, to Affiliated's counsel, Respondent Local 250's secretary-treasurer, Timothy J. Twomey,[4] stated that "WE HAVE TO RESPECT AND HONOR A LAWFUL PICKET LINE." Moreover, on May 19, Twomey renewed his statement of Respondent Looal 250's intent to honor those picket lines, in the interest of "labor movement solidarity," during a discussion with Affiliated's counsel.

That intention was communicated to employees represented by Respondent Local 250. Thus, commencing on May 20, Respondent Local 250 began distributing a bulletin, signed by Twomey, to the employees that it represented at the seven health care institutions involved in negotiations with Respondent Local 2. The text of the message in that bulletin stated:

> Dear Member:
>
> We are sure that you know that Local 250 is in a position of not being able to call a strike because of our existing contract, Article X, Section 9, paragraph 236.
>
> Concurrently we cannot provide strike benefits or in any way appear to be striking the Hospitals but *we are asking our members to use their good judgment in honoring the picket line put out by Local 2. They have the sanction of the San Francisco Labor Council.*
>
> *Local 250 has complied with the notice requirement. Telegram was sent to Federal Mediation*, "Ten day strike notice given by Hotel and Restaurant Employees and the Bartenders Union Local 2 against Affiliated Hospitals of San Francisco: pursuant to our collective bargaining agreement with Affiliated Hospitals of San Francisco, *we have to respect and honor a lawful picket line.*"
>
> *We wish to ask all of our members to remember the trade union principle of supporting our Brothers and Sisters in their struggle.* [Emphasis supplied.]

Obviously, the italicized portions of this bulletin constitute something more than a neutral statement intended to make "the law known to its members." *Trades Council of Tampa, supra*. For, by asking them to use their "good judgment in honoring" Respondent Local 2's picket lines and by admonishing them "to remember the trade union principle of supporting our Brothers and Sisters in their struggle"—in the context of statements that Respondent Local 2's picket lines "have the sanction of the San Francisco Labor Council" and that FMCS had been notified that Respondent Local 250 *had* "to respect and honor a lawful picket line"—Respondent Local 250 was appealing to the employees that it represented to honor those picket lines and, thereby, engage in a work stoppage.

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[4] Respondent Local 250 conceded that Twomey had occupied this position between May 1 and 9. There is no evidence that Twomey ceased being secretary-treasurer thereafter and Respondent Local 250 does not appear to argue seriously that its secretary-treasurer is not its agent. Therefore, I find that, at all times material on and after May 1, Twomey had been an agent of Respondent Local 250 within the meaning of Sec. 2(13) of the Act.

Indeed, of themselves, appeals to trade union principles, when made by high-level officials of labor organizations, such as Twomey, constitute inducement or encouragement of employees and members of those labor organizations. See, e.g., *N.L.R.B.* v. *Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO [New York Telephone Company]*, 477 F.2d 260, 264–265 (2d. Cir. 1973). Similarly, asking employees to support "our Brothers and Sisters in their struggle" constitutes an appeal and an inducement to employees to engage in concerted activity. See, e.g., *Cuyahoga, Lake, Geauga and Ashtabula Counties Carpenters District Council, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, et al. (The Berti Company)*, 143 NLRB 872, 875 (1963). Moreover, by pointing out that it had "complied with the notice requirement" and by reciting that FMCS had been notified that Respondent Local 250 had "to respect and honor a lawful picket line," in the context of a reminder to employees of "the trade union principle of supporting" other employees, Respondent Local 250 was suggesting the negative action of not reporting for work. See, e.g., *General Drivers, Salesmen and Warehousemen's Local No. 984, et al. (The Humko Co., Inc.)*, 121 NLRB 1414, 1419 (1958). Therefore, I find that Respondent Local 250 went well beyond merely advising employees that it represented to honor Respondent Local 2's picket lines. Rather, it encouraged and attempted to persuade them to do so and, when they did, their actions were attributable to Respondent Local 250.

Respondent, however, argues that it specifically had advised employees which it represented that it was not calling a strike, that it had not compelled its members—through such measures as threats of fines—to refrain from working, and that, at best, only 10 percent of the employees which it represented had ever honored Respondent Local 2's picket lines. However, strikes are not measured by their degree of success, nor by whether labor organizations use every means possible to ensure their success. Obviously, "the right to engage in a sympathy strike or honor another union's picket line is also protected." *Gary-Hobart Water Corporation*, 210 NLRB 742, 744 (1974). The point here, however, is that "[a]n employee who refuses to cross a picket line is in effect joining the strike . . . ." *N.L.R.B.* v. *West Coast Casket Company, Inc.*, 205 F.2d 902, 905 (9th Cir. 1953). In other words, an employee becomes a striker by honoring a picket line. For, "the employee, even though he is not a member of the striking union, has in effect plighted his troth with strikers, joined in their common cause, and has thus become a striker himself." *N.L.R.B.* v. *Southern Greyhound Lines, Division of Greyhound Lines, Inc.*, 426 F.2d 1299, 1301 (5th Cir. 1970); accord: *Kellogg Company* v. *N.L.R.B.*, 457 F.2d 519 (6th Cir. 1972); *Southern California Edison Company*, 243 NLRB 372 (1979).

Accordingly, by appealing to the employees which it represented to honor Respondent Local 2's picket lines, Respondent Local 250 was appealing to them to engage in a strike or, at the very least, in a "concerted refusal to work at [the] health care institutions" at which they were employed. Therefore, Respondent Local 250 was obliged to provide the 10-day notice prescribed in Section 8(g) of the Act. *District 1199, Hospital & Healthcare Employees, supra*. By failing to do so and by initiating its appeals for employees to honor the picket lines on May 20, Respondent Local 250 violated the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent Local 2 and of Respondent Local 250, set forth above, occurring in connection with the operations of Affiliated and of its employer-members, described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead, and have led, to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. Affiliated Hospitals of San Francisco and its employer-members—Marshal Hale Memorial Hospital, Children's Hospital of San Francisco, Saint Francis Memorial Hospital and Medical Center, St. Luke's Hospital, St. Mary's Hospital and Medical Center, and Presbyterian Hospital of Pacific Medical Center— are health care institutions within the meaning of Sections 2(14) and 8(g) of the Act and are employers engaged in commerce and operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Hotel and Restaurant Employees and Bartenders Union, Local 2, AFL-CIO, and Hospital and Institutional Workers' Union, Local 250, SEIU, AFL-CIO, are each labor organizations within the meaning of Section 2(5) of the Act.

3. By striking and picketing the above-named employer-members of Affiliated Hospitals of San Francisco on May 19, 1980, without providing to them and to the Federal Mediation and Conciliation Service 10-days' advance written notice of the date and time of commencement of that strike, Hotel and Restaurant Employees and Bartenders Union, Local 2, AFL-CIO, violated Section 8(g) of the Act.

4. By honoring the picket lines of another labor organization at the above-named employer-members of Affiliated Hospitals of San Francisco on and after May 20, 1980, thereby engaging in a strike and concerted refusal to work there, without providing 10-day advance written notice to them and to the Federal Mediation and Conciliation Service, Hospital and Institutional Workers' Union, Local 250, SEIU, AFL-CIO, violated Section 8(g) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[5]

Respondent Hotel and Restaurant Employees and Bartenders Union, Local 2, AFL-CIO, its officers, agents, and representatives, shall:

[5] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the find-

Continued

1. Cease and desist from engaging in any strike, picketing, or other concerted refusal to work at the premises of the above-named employer-members of Affiliated Hospitals of San Francisco, or any other health care institution, without timely notifying, in writing, such health care institutions and the Federal Mediation and Conciliation Service, not less than 10 days prior to such action, of the date and time of commencement of that action.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Post at its business offices, meeting halls, and other places where notices to its members customarily are posted copies of the attached notice marked "Appendix A."[6] Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by its authorized representative, shall be posted by Hotel and Restaurant Employees and Bartenders Union, Local 2, AFL-CIO for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by it to ensure that said notices are not altered, defaced or covered by any other material.

(b) Furnish to the Regional Director for Region 20 sufficient signed copies of the aforesaid notice for posting by Affiliated Hospitals of San Francisco, Marshal Hale Memorial Hospital, Children's Hospital of San Francisco, Saint Francis Memorial Hospital, Mount Zion Hospital and Medical Center, St. Luke's Hospital, St. Mary's Hospital and Medical Center, and Presbyterian Hospital of Pacific Medical Center, if they are willing, in places where notices to their employees are customarily posted.

(c) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Respondent Hospital and Institutional Workers' Union, Local 250, SEIU, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from honoring or engaging in any strike, picketing or other concerted refusal to work at the premises of the above-named employer-members of Affiliated Hospitals of San Francisco, or any other health care institution, without timely notifying, in writing, such health care institutions and the Federal Mediation and Conciliation Service, not less than 10 days prior to such action, of the date and time of commencement of that action.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Post at its business offices, meeting halls, and other places where notices to members are customarily posted copies of the attached notice marked "Appendix B."[7] Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by its authorized representative, shall be posted by Hospital and Institutional Workers' Union, Local 250, SEIU, AFL-CIO, for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by it to insure that said notices are not altered, defaced, or covered by any other material.

(b) Furnish to the Regional Director for Region 20 sufficient signed copies of the aforesaid notice for posting by Affiliated Hospitals of San Francisco, Marshal Hale Memorial Hospital, Children's Hospital of San Francisco, Saint Francis Memorial Hospital, Mount Zion Hospital and Medical Center, St. Luke's Hospital, St. Mary's Hospital and Medical Center, and Presbyterian Hospital of Pacific Medical Center, if they are willing, in places where notices to their employees are customarily posted.

(c) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

ings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[6] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted By Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[7] See fn. 6, *supra*.

APPENDIX A

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT engage in any strike, picketing, or other concerted refusal to work at the premises of Marshal Hale Memorial Hospital, Children's Hospital of San Francisco, Saint Francis Memorial Hospital, Mount Zion Hospital and Medical Center, St. Luke's Hospital, St. Mary's Hospital and Medical Center, and Presbyterian Hospital of Pacific Medical Center, or any other health care institution, without timely notifying, in writing, such health care institutions and the Federal Mediation and Conciliation Service, not less than 10 days prior to such action, of the date and time of commencement of that action.

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS UNION, LOCAL 2, AFL-CIO